ORIGINAL

DOCKET FILE COPY ORIGINAL

Federal Communications Commission

Washington, DC 20554

RECEIVED

JAN 10 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

REPLY COMMENTS OF ARCH COMMUNICATIONS GROUP, INC.

Arch Communications Group, Inc. ("Arch"), hereby submits these Reply Comments in the captioned proceeding. The points addressed below relate to matters of particular concern to the paging industry.

I. PAGING CARRIER INELIGIBILITY FOR UNIVERSAL SERVICE SUPPORT SHOULD RESULT IN REDUCED CONTRIBUTION REQUIREMENTS

One of the critical questions to be decided in this proceeding is the appropriate means for obtaining the funding necessary to support universal service programs. The scheme established by Congress for the collection of these funds, as set forth in Sections 254(b)(4) and 254(d) of the Telecommunications Act of 1996 ("the 1996 Act"),[1] requires that "all" providers of telecommunications services should contribute on an "equitable and nondiscriminatory" basis. Arch's Comments pointed out that the Joint Board improperly blurred these statutory requirements.

[1] Pub. L. No. 104-104, 110 Stat. 56 (1996).

The Joint Board concluded, without elaborating, that a "broad base of funding will ensure that competing firms make 'equitable and nondiscriminatory contributions' and will reduce the burden on any particular class of carrier."[2] This interpretation cannot be squared with the statutory language, however. If a broad base of funding, by itself, would necessarily result in equitable and nondiscriminatory payments, as the Joint Board suggests, then Congress needed to do no more than mandate adoption of a system in which "all" providers of telecommunications services contribute. But, Congress did more than this — it also decreed that contributions were to be assessed on an equitable and nondiscriminatory basis, thus establishing a separate standard requiring independent analysis. Contrary to the Joint Board's assertions, a broad base of funding, standing alone, does not satisfy this latter standard.

Arch's Comments pointed out that a necessary consideration in this regard is that paging companies, based on the Joint Board's recommended criteria, are ineligible to receive universal service support. This critical distinction between paging carriers and other segments of the telecommunications industry must be taken into account for purposes of assessing appropriate universal service contribution rates for paging carriers. Many commenters agree with this assessment. The Paging and Narrowband PCS Alliance ("PNPA") of the Personal Communications Industry Association ("PCIA") states, for example, the "contributions to the fund should reflect carriers' ability to

---

2 *Federal-State Joint Board on Universal Service, Recommended Decision*, CC Docket No. 96-45, FCC 96-3, at ¶ 784 ("*Recommended Decision*").

recover from the fund."[3] PageNet likewise maintains that "federal universal service contribution requirements should be linked to carrier eligibility for support":

> fundamental to the concept of universal service in the 1996 Act is the Congressional recognition that interstate telecommunications carriers' contributions are to be assessed on an 'equitable and nondiscriminatory basis'. It is submitted that, in order for these standards to be provided any meaning, the rate at which a carrier is assessed must be related to the likelihood that such carrier will have an opportunity to draw from the fund into which it is contributing.[4]

PNPA and PageNet also note that paging companies compete, at least in part, with other companies that provide all of the "core" services and which will receive universal service support.[5] This will create a competitive imbalance unless paging companies are afforded an offset in contribution requirements.

As a cure to these problems, PNPA suggests that only 50% of messaging service revenues be included in calculating total gross revenues that are subject to the contribution formula.[6] PageNet recommends a contribution rate that is one-third to one-half the rate assessed carriers eligible to draw from the universal service pool.[7] Arch submits that adoption of PageNet's proposal would better comport with Congress'

---

[3] Comments of PNPA at 3-6.

[4] Comments of PageNet at 10-11. *See also* Comments of PageMart Inc. at 7-8 ("Equity mandates that carriers that do not receive support subsidies be assessed at a lower rate.").

[5] Comments of PNPA at 4-5; PageNet at 12.

[6] Comments of PNPA at 6.

[7] Comments of PageNet at 13.

directive that such assessments be equitable and nondiscriminatory. The methodology proposed by the Joint Board, conversely, would not be consistent with the intent of Congress.

II. CMRS PROVIDERS ARE SUBJECT ONLY TO FEDERAL UNIVERSAL SERVICE OBLIGATIONS

The Joint Board determined, without explanation, that Section 332(c)(3) of the Act "does not preclude states from requiring CMRS providers to contribute to state support mechanisms."[8] Many commenters noted that this interpretation is inconsistent with the language and intent of the statute.[9] Arch agrees with these parties' observations.

The CMRS position is straightforward. Section 332(c)(3)(A), adopted by Congress as part of the Budget Act in 1993,[10] provides, in part, that

> Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such state) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.[11]

---

[8] *Recommended Decision*, at ¶ 791.

[9] *See* Comments of PCIA at 31-33; PageNet at 5-9; Cellular Telecommunications Industry Ass'n ("CTIA") at 13-17; AirTouch Communications, Inc. at 30-34; PageMart, Inc. at 2-3.

[10] Omnibus Budget Reconciliation Act of 1993, Pub. L 103-66, § 6002, 107 Stat. 394 (1993).

[11] 47 U.S.C. § 332(c)(3)(a).

The only reasonable interpretation of this provision is that states may <u>not</u> impose universal service obligations on CMRS providers unless and until they can demonstrate that CMRS offerings serve as a substitute for landline service on a widespread basis within the respective states.[12]

The Joint Board provides no explanation for its conclusion that the explicit preemption found in Section 332(c)(3)(A) is no longer valid. Insofar as the Joint Board may be of the view that the 1996 Act has superseded the 1993 Budget Act amendments to the Communications Act, its analysis does not withstand scrutiny. Although Section 254(f) purports to give states the authority to impose universal service obligations on "every telecommunications carrier," this general grant of authority would not be construed, under accepted standards of statutory interpretation, as repealing the explicit preemption enacted three years earlier in Section 332(c)(3)(A). As many commenters note, moreover, Congress made clear in the 1996 Act that it did not intend to revise its earlier decision to preempt states from imposing universal service obligations on CMRS providers.[13] In this regard, Congress added new Section 253, which generally precludes

---

[12] This is the interpretation recently adopted by the Superior Court for the District of Hartford-New Britain, Connecticut. Based on the language in Section 332(c)(3)(A), that Court expressly held that "Section 332(c)(3)(A) of the Budget Act preempts the [Connecticut Public Utility Commission] from assessing [plaintiff-appellant CMRS providers] for payments to the Universal Service and Lifeline Programs." *Metro Mobile OTS of Fairfield County, Inc., Metro Mobile OTS of Hartford, Inc., Metro Mobile OTS of New Haven, Inc., Metro Mobile OTS of New London, Inc., and Metro Mobile OTS of Windham, Inc. v. Con. Dept. of Pub. Utility Control,* Nos. CV-95-00512758, CV-95-05500968, Memorandum of Decision (Conn. Sup. Ct., Dec. 9, 1996), at 8.

[13] *See, e.g.,* Comments of CTIA at 16; PageNet at 7-9; AirTouch at 32-33.

states from adopting regulations that will impede entry by telecommunications service providers. While Section 253(b) establishes that this limitation is not intended to extend to state-imposed universal service obligations, Section 253(e) provides further that "[n]othing in this section shall affect the application of Section 332(c)(3) to commercial mobile service providers." These subparagraphs, read together, clearly evidence Congress' intent to leave Section 332(c)(3)(A)'s preemptive language intact. The Commission should therefore reject the Joint Board's contrary conclusion.

Respectfully submitted,

Paul H. Kuzia
Executive Vice President
Technology and Regulatory Affairs
Arch Communications Group, Inc.
1800 West Park Drive, Suite 350
Westborough, MA 01581
(508) 870-6600

January 10, 1997

CERTIFICATE OF SERVICE

I, Donna L. McClain, hereby certify that copies of the foregoing Reply Comments in Response to the *Recommended Decision* were served this 10th day of January, 1997, by first-class postage prepaid to the following:

The Honorable Reed E. Hundt, Chairman
Federal Communication Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

The Honorable Rachelle B. Chong,
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

The Honorable Julia Johnson,
Commissioner
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, FL 32399-0850

The Honorable Kenneth McClure,
Commissioner
Missouri Public Service Commission
301 West High Street, Suite 530
Jefferson City, MO 65101

The Honorable Sharon L. Nelson, Chairman
Washington Utilities and
Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Martha S. Hogerty
Public Counsel for the State of Missouri
P.O. Box 7800
Jefferson City MO 65102

Paul E. Pederson, State Staff Chair
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Lisa Boehley
Federal Communications Commission
2100 M Street, N.W., Room 8605
Washington, DC 20554

Charles Bolle
South Dakota Public Utilities Commission
State Capitol, 500 E Capitol Street
Pierre, SD 57501-5070

Deonne Bruning
Nebraska Public Service Commission
300 The Atrium
1200 N Street, P.O. Box 94927
Lincoln, NE 68509-4927

James Casserly
Federal Communications Commission
Office of Commissioner Ness
1919 M Street, N.W., Room 832
Washington, DC 20554

The Honorable Laska Shoenfelder, Commissioner
uth Dakota Public Utilities Commission
State Capitol, 500 East Capitol Street
Pierre, SD 57501-5070

John Nakahata
Federal Communications Commission
Office of the Chairman
1919 M Street, N.W., Room 814
Washington, DC 20554

Lee Palagyi
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive, S.W.
Olympia, WA 98504

Kimberly Parker
Federal Communications Commission
2100 M Street, N.W., Room 8609
Washington, DC 20554

Barry Payne
Indiana Office of the Consumer Counsel
100 North Senate Avenue, Room N501
Indianapolis, IN 46204-2208

James Bradford Ramsay
National Association of Regulatory Utility Commissioners
P.O. Box 684
Washington, DC 20044-0684

Gary Seigel
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, DC 20554

John Clark
Federal Communications Commission
2100 M Street, N.W., Room 8619
Washington, DC 20554

Bryan Clopton
Federal Communications Commission
2100 M Street, N.W., Room 8615
Washington, DC 20554

Pamela Szymczak
Federal Communications Commission
2100 M Street, N.W., Room 8912
Washington, DC 20554

Lori Wright
Federal Communications Commission
2100 M Street, NW., Room 8603
Washington, DC 20554

Jeanine Poltronieri
Federal Communications Commission
2100 M Street, N.W., Room 8924
Washington, DC 20554

Brian Roberts
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Richard Smith
Federal Communications Commission
2100 M Street, N.W., Room 8605
Washington, DC 20554

Donna L. McClain

Donna L. McClain